No. 173.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, ET AL.,

PLAINTIFFS IN ERROR.

vs.

NEGAUNEE IRON COMPANY, ET AL.,

DEFENDANTS IN ERROR.

Brief for Plaintiffs in Error

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No. 173.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, WILLIAM G. MATHER AND MURRAY M. DUNCAN,

PLAINTIFFS IN ERROR.

vs.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG AND MARY KAUFMAN,

DEFENDANTS IN ERROR.

Brief for Plaintiffs in Error.

THE FEDERAL QUESTION.

1. The property of plaintiffs in error, William G. Mather and The Iron Cliffs Company, as stockholders in the stock of the Pioneer Iron Company, was taken without due process of law.

2. The property of plaintiffs in error was so taken by judgment of the Courts of the State of Michigan, declaring terminated, cutting off, and destroying the use and interest of the Pioneer Iron Company in a ninety-nine

year lease of great value, a large proportion of the property of said company. Said Pioneer Iron Company was not a party to said suit. Neither said company nor its stockholders, including said plaintiffs in error, were represented or permitted an opportunity to appear and defend their corporate property rights.

3. The federal question here involved was raised in said State Courts on behalf of both William G. Mather and The Iron Cliffs Company, who were and are owners of the stock in the Pioneer Iron Company. Said question was presented to and considered by said State Courts where it was decided adversely to the claims made by said defendant stockholders.

4. The fact that the state Courts considered and passed upon the federal question involved, leads to the conclusive presumption that such question was properly raised in such state Courts by the stockholders who were defendants below. The allowance of the writ of error herein by the Supreme Court of Michigan raises a like presumption.

5. No non-federal question could have been decided against the Pioneer Iron Company which was not a party to the suit. No judgment could have been rendered by the state Courts affecting the property rights of the Pioneer Iron Company which did not *necessarily involve* the federal question here raised.

THE FACTS.

The property of the Pioneer Iron Company was taken, and thereby, the value of its stock decreased — without due process of law.

The Pioneer Iron Company, as hereinafter shown, owned a ninety-nine year lease, granting to it the right to mine for iron ore upon certain large tracts of land in Marquette County, Michigan.

This suit was begun in the Circuit Court of Marquette County, Michigan, to obtain a decree; (1.) *Declaring said lease to the Pioneer Iron Company "terminated and of no binding force or effect against" the complainants;* (2.) *That said lease be cancelled as a cloud upon complainants' title and that said title to all the iron ore and marble in and upon said lands be quieted and confirmed in complainants;* and (3.) *That complainants be granted a perpetual injunction, preventing defendants, who were parties to the suit, from setting up in the name of the Pioneer Iron Company, or in any other manner, any right or title under said lease from Charles T. Harvey to the Pioneer Iron Company, and from entering upon said lands or removing therefrom any iron ore, etc.* (Record, pages 11, 12.)

The relief thus asked was predicated upon numerous allegations of acts and defaults of the Pioneer Iron Company, which were claimed to result in the termination of all rights of said company under said lease; and the further allegations that defendants, claiming to act as stockholders, directors and agents of said company were wrongfully asserting, in its name, its existing right under said lease and were

in the act of mining and removing iron ore from said premises.

The Pioneer Iron Company was not a party to said suit.

THE CIRCUIT COURT of Marquette County, Michigan by its decree, proceeded to and did pass upon the rights of the Pioneer Iron Company under said lease, and found and adjudged that it had forfeited its rights therein and thereunder, and that the same was terminated and had ceased to exist. (Record, pages 556, 557, 558, 559).

Based upon such findings said Court determined, (Record, page 559), that defendants *William G. Mather and Murray M. Duncan,* were trespassers upon the property in question.

Said Court thereupon, "in consideration of the foregoing findings and determinations of the Court concerning the particular matters set forth in complainants' bill of complaint," ordered, adjudged and decreed

> "that the defendants, their counselors, attorneys, solicitors and agents, and each and every of them, whether acting in their individual or *representative capacity*, immediately vacate and remove from the lands described in the bill of complaint, and that they and each of them be and they hereby are perpetually enjoined from further entering upon said lands of complainants for the purpose of exploring or taking therefrom any minerals or iron ore, or for any other purpose whatever without the consent and authority of complainants."

THE SUPREME COURT of the State of Michigan by its

decree, (Record, page 577), "ordered, adjudged and decreed that the decree of the Circuit Court of Marquette County in Chancery be, and the same is hereby, in all things, affirmed."

The net result of the litigation is this; that by the judgments of the Courts of the State of Michigan the ninety-nine year lease from Harvey to the Pioneer Iron Company has been terminated; and its officers, whether acting individually or *as representatives of the Pioneer Iron Company*, are perpetually enjoined from asserting the rights of said company under said lease by entering upon the premises or prosecuting the work of mining thereon.

Said entire proceeding and litigation was in absence of the Pioneer Iron Company as a party to the suit.

FEDERAL QUESTION RAISED.

As hereinafter on pages 28-31 of this brief shown, the defendants at every step asserted by answer and otherwise the existence of the Pioneer Iron Company and its ownership of the lease in question; and defendant, William G. Mather, acting for himself and for The Iron Cliffs Company, (whose stock was held by him in trust), alleged;

> "That said Mather was a stockholder in said Pioneer Iron Company, personally *and as trustee*, and that to decree the forfeiture,termination or expiration of the ninety-nine year lease, to limit, annul or diminish its value, — said Pioneer Iron Company not being made a party to the suit, — would deprive said stockholders of their property without *due process of law*, in violation of their rights under the Constitution of the United States." (Record, pages 51, 52).

The federal constitutional question was in this way, and repeatedly otherwise, set up and claimed. In every brief and argument filed and made this right was asserted. By their respective opinions both the Circuit Court of Marquette County, (Record, pages 554, 555), and the Supreme Court, (Record, page 569), considered it and decided it against the plaintiffs in error.

THE PIONEER IRON COMPANY, — ITS REORGANIZATION AND PROPERTY.

The Pioneer Iron Company was incorporated in the year 1857 under the laws of the State of Michigan, (Record, page 1-16); its corporate powers being then by constitutional provision limited to the period of thirty years.

Provision was and is made by the law of Michigan as follows:

> "(8534) *Sec.* 8. All corporations, whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless, continue to be bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established."

Subsequently, before the extension of the Pioneer Iron Company by its reorganization, the constitution of Michigan was amended as follows:

Art. 15, *Sec.* 10. "No corporation, except for municipal purposes, or for the construction of railroads, plank roads and canals, shall be created for a longer time than thirty years; but the legislature may provide by general laws, applicable to any corporations, for one or more extensions of the term of such corporations while such term is running, not exceeding thirty years for each extension, on the consent of not less than a two-thirds majority of the capital of the corporation; *and by like general laws for the corporate reorganization for a further period not exceeding thirty years, of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital;* Provided, That in cases of corporations where there is no capital stock, the legislature may provide the manner in which such corporations may be reorganized."

Thereupon, before the reorganization of said company, the legislature of the State of Michigan duly enacted a statute of said state, providing as follows:

"(7035) Section 1. *The People of the State of Michigan enact,* That it shall be lawful for any corporation heretofore or hereafter organized under the general laws of this state for mining, smelting or manufacturing purposes, whose corporate term has expired, or shall expire by limitation, at a special meeting of its stockholders called for that purpose, by a vote of at least four-fifths of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Such meeting may be called in accordance with the by-laws of the corporation and the laws of this state

applicable to the same class of corporations whose term has not expired, by order of the directors de facto of the corporation. Upon the adoption of such resolution by a vote in person, or by proxy duly filed, of a majority of at least four-fifths of the capital stock, it shall be the duty of the president and secretary of the stockholders' meeting to make, sign and acknowledge duplicate articles of association, as in the case of a new corporation, to which shall be appended a copy of the proceedings of such stockholders' meeting certified by the secretary and verified by his oath, which articles of association shall be filed with the secretary of state and with the county clerk of the county where the corporation carries on its business, and be by both recorded in their respective offices, at the expense of said corporation; and the copies so filed, the record thereof, or a certified copy of either of such records shall be *prima facie* evidence of the facts therein recited; but said articles of association need not set forth in the case of corporations existing under the provisions of chapter one hundred and twenty-three of Howell's annotated statutes, the cash value of property conveyed to the corporation contemporaneously with its re-organization, nor the names of the directors for the first year; Provided nevertheless, That this act shall not be applicable to any corporation whose term may expire after this act takes effect, unless its meeting be held within two years after such expiration; nor to any corporation whose business has been or may be wound up and property sold pursuant to the voluntary action of the stockholders or of any Court of competent jurisdiction; Provided, That no corporations, except corporations organized to carry on business in the counties of Houghton, Keweenaw and Ontonagon, shall be permitted to reorganize hereunder which for the past ten years

have ceased to carry on the business for which they were organized.

(7036) *Sec.* 2. The renewed term of such corporation shall begin from the expiration of the former term thereof, and the corporation thus renewed shall hold and own all the property held and owned by the corporation before renewal, and shall be liable to all its debts, liabilities and obligations as fully as if the former corporate term had not expired; and the directors and officers, who were such in fact at the time of the meeting, shall hold and continue in their offices until their successors shall be elected and shall qualify; Provided, nevertheless, That if the call for the meeting to extend the corporate term shall embrace a notice that a number of the directors will be elected at such meeting, such election may be then held accordingly, and the directors then elected shall, when they shall qualify, become and be the directors of such renewed corporation."

In the year 1889, (and subsequently as shown by the record), under and by authority of the constitution and laws of the State of Michigan, the Pioneer Iron Company took the necessary steps and proceedings and duly reorganized said corporation, thereby extending its term for a second period of thirty years.

Such reorganization is shown by the record without contradiction; *first,* by amendment to complainants' bill, (Record, pages 49, 50), and, *second,* by the introduction of the certified copies of the records of the Secretary of State of the State of Michigan, showing such re-organization, (Record, pages 295-303, also pages 517-545).

Every step required by the law of Michigan was thus taken to re-organize and continue the corporate powers, existence and right of said company. The State of Michigan has never questioned the corporate existence of the Pioneer Iron Company.

It was also established by the evidence that there was no cessation by the Pioneer Iron Company of an active and extensive business, not only before, but after the year 1889, up to the present time.

Record, page 369. It is shown that the Pioneer Iron Company was executing options and mining leases.

Record, page 375. Is an important contract between the Pioneer Iron Company and the Arctic Iron Company, dated September, 1889.

Record, pages 382-384. Is a list, about one hundred and forty, of deeds and conveyances, extending from the year 1873 continuously down through the year 1896.

Record, page 385. It is shown that the Pioneer Iron Company owned and was then operating a furnace at Marquette, Michigan.

Record, pages 386, 387. Is the deed of conveyance of said furnace at Marquette, from the Carp River Furnace Company to the Pioneer Iron Company, dated January 3, 1900.

Record, page 392. Shows the dealing in royalties from 1887 to April 1891.

Record, page 400. Shows a deed executed by the Arctic Iron Company to the Pioneer Iron Company, dated September 14, 1889.

Record, page 404. Shows the proceedings and expenses in a tax case, in which, in the year 1899, the Pioneer Iron Company, was interested together with complainant Edward N. Breitung.

On Record, page 102 is a copy of the two notices given by complainants in this suit, directed to the Pioneer Iron Company, — all conclusively showing the recognized and actual corporate existence of the company as a going concern under the laws of Michigan.

The record is further full of transactions of business by the Pioneer Iron Company continuously up to the beginning of this suit.

THE NINETY-NINE YEAR LEASE.

In the year 1857 Charles T. Harvey, by duly executed conveyance, granted to the Pioneer Iron Company a lease to mine iron ore for ninety-nine years on the lands in question. This lease was duly recorded. It is set forth in full as a part of the complainants' bill, (Record, pages 18, 19, 20). Said lease contains the provisions that; "The rights and easements above mentioned *shall descend to the corporate successors of the party of the second part,* but not to its assigns." (Record, page 20).

The Pioneer Iron Company, as reorganized and so extended, continued to assert its rights in said lease, it being the sole owner and the only person interested as lessee therein.

More than *fifty years of the term* of said lease was yet unexpired when this suit was brought, and it is admitted that the lands in question are underlaid with iron ore, making this leasehold interest of great value.

It is this lease, and the interest of the Pioneer Iron Company, thereunder, that complainants below sought to set aside and destroy, and which by the judgment of the state Courts was declared terminated in absence of the Pioneer Iron Company.

Argument

RIGHTS OF PIONEER IRON COMPANY INVADED.

We will show that the constitutional rights of stockholders, plaintiffs in error, are practically identical with the rights of the corporation. Such rights are therefore violated when the property of the corporation is taken without due process of law.

The question here presented then is this; Could the rights of the Pioneer Iron Company in the ninety-nine year lease be litigated and decided in a suit to which it was not a party? Could the Courts of Michigan legally, *in the absence of the Pioneer Iron Company,* proceed to find that its rights to mine under said lease, had terminated, and to perpetually enjoin its stockholders, officers and agents both individually and *as representatives of said company* from going upon said property for any purpose?

The record shows that this company was organized and was later reorganized and its corporate powers extended under the express provisions of the constitution and laws of Michigan, and that the same was and now is recognized by the state itself.

Complainants admit that the ninety-nine year lease was granted to the Pioneer Iron Company, and if anybody now

owns or could own the same, that owner is the existing reorganized corporation.

The lease itself has yet fifty years to run, — it in terms "*descended to the successors of the Pioneer Iron Company*" The law of Michigan provides that the corporation, as reorganized, should continue to hold and own the corporate property, hence the Pioneer Iron Company now reorganized is either the original corporation with its corporate existence extended, or it is the successor of the original corporation; and in either case it holds the ninety-nine year lease.

Under these facts could this lease be legally decreed to have terminated, and the property of the Pioneer Iron Company therein be cut off or affected directly or indirectly in a suit to which said company was not a party? and how could a decision injuriously affecting those rights be entered in such a suit without necessarily involving the federal question?

There might be room for lawyers and Courts to differ as to the property rights now existing in the corporation, and as to the merits of its claims when heard, but that is not the question here. The question is; Has the corporation *the right to be heard* before judgment is entered against it? and can any such judgment be rendered in a suit between complainants and third parties, even the stockholders of said company, but to which suit the corporation is not itself a party and if any such judgment or decree has been entered in any such suit, does it not necessarily follow that the constitutional rights of the Pioneer Iron Company have been involved?

We know the answer which complainants below attempt to make to this contention. They did not make the Pioneer Iron Company a party to the proceeding because, they

claim, that if they had done so they would have recognized its legal existence, which in this proceeding it was inconvenient for them to do. It is a sufficient answer to this contention to say, if the legal existence of the Pioneer Iron Company is called into question, that it must be done in a proper proceeding. The legal existence of the Pioneer Iron Company does not depend upon the recognition of it by defendants in error, but upon the recognition of the state; and while and so long as the state recognized the Pioneer Iron Company as a living corporation, it does not lie in the mouth of any creditor or claimant against the Pioneer Iron Company to dispute its existence. It would have been entirely competent for the complainants, if they had seen fit, to have had the corporate existence of the Pioneer Iron Company properly determined in any other proceeding, like a quo warranto proceeding brought by the state, *but as long as the Pioneer Iron Company is recognized by the state it is impossible for any complainants to cut off its rights in a proceeding to which the Pioneer Iron Company is not itself a party.*

The Law.

(1.) It is the settled law, firmly established by a long and unbroken line of decisions that

A Court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without affecting those rights.

Shields v. Barrow, 17 Howard, 130, 141;
Mallow v. Hinde, 12 Wheaton, 198;
California v. Southern Pacific Co. 157 U. S. 229-248, 251;
Minnesota v. Northern Securities Co., 184 U. S., 199-237.
Water Co. v. Babcock, 76 Fed. Rep., 243, 248, 249, 252.

(2.) An adjudication between parties to a suit, which involves or affects the property rights of persons who are not before the Court, violates the constitutional provision preventing the taking of property without due process of law.

Taylor & Co. v. Southern Pacific Co., 122 Fed Rep., 147, 152;
Water Works v. New Orleans, 164 U. S., 480;
Pennoyer v. New, 95 U. S., 714, 733;
Windsor vs. McVeigh, 93 U. S., 264-277.

In the case of *Shields v. Barrow*, 17 Howard, 130, see opinion 139, this Court used the following language:—

> "The Court here points out three classes of parties to a bill in equity. They are: (1.) Formal parties; (2.) Persons having an interest in the controversy and who ought to be made parties in order that the Court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the Court, so that the Court can proceed to a decree and do complete and final justice without affecting other persons not before the Court, — the latter are not indispensable parties. (3.) *Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.*"

Parties of the third class, the Court hold to be indispensable.

On page 141 of the same opinion the Court proceeds with the following language, quoting *Mallow v. Hinde*, 12 Wheaton 198, when speaking of a case where an indispensable party was not before the Court:

> "We do not put this case upon the ground of jurisdiction, but upon a much broader ground, which must equally apply to all Courts of equity whatever may be their structure as to jurisdiction; we put it on the ground that no Court can adjudicate directly upon a person's rights without the party being either actually or constructively before the Court."

In the same decision and reaching the conclusion which has been subsequently so often followed, this Court, on page 141, further said:

> "It remains true notwithstanding the Act of Congress and the 47th Rule that a Circuit Court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without affecting those rights."

To the same effect is *California v. The Southern Pacific Co.*, 157 U. S., 229, see pages 248-251, where Chief Justice Fuller strongly asserts this principle of legal right, and reviews and affirms the foregoing decisions. On pages 255, 256, the application of the same is made to the case under consideration, in language peculiarly adapted to this present suit, and the Court refused to permit the litigation to go forward because of the effect it would have upon the rights of absent parties.

In *Minnesota v. Northern Securities Co.*, 184, U. S., 199-237, the same line of decisions is again affirmed; and the Court bases its judgment in dismissing the proceeding, upon the principle that there exists *no power to adjudicate the rights of parties not in court*, — or to adjudicate the rights of parties before the court, — where the rights of third parties are necessarily connected with and affected by the litigation.

A review of this entire line of decisions is also found in *Water Company v. Babcock*, 76 Federal Reporter, 243, 248, 249, 252.

In the case of *Taylor & Co. v. Southern Pacific Co.*, 122 Federal Reporter, 147, a suit was brought to enjoin the voting of certain stock at the election of directors of the Southern Pacific Co. Various of the persons interested were not made parties to the suit; but it was urged upon the Court that a decree might be rendered against those who were parties and especially against the Southern Pacific Co.

Judge Lurton, in an opinion of great strength and clearness, on page 152 uses the following language: "The principle of *due process of law* unconditionally compels observance of the rule which limits the just jurisdiction of every Court to a determination only of the rights of persons who are parties to the litigation." He then proceeds further to discuss the decisions of this Court establishing that general principle, basing it, among other cases, upon the holding in *Mallow v. Hinde*, 12 Wheaton, 198, and *Minnesota v. Northern Securities Co.*, 184 U. S., 199.

This principle is stated in *New Orleans Water Works vs. New Orleans*, 164 U. S., 471, see 480, where Mr. Justice Harlan, speaking for the Court says:

> "In absence of the parties interested and without their having an opportunity to be heard, the Court would be without jurisdiction to make an adjudication affecting them. Such a decree would appear upon the very face of the record not to be *due process of law*, and could be treated everywhere as a nullity."

The same principle is found decided in *Pennoyer v. Neff*, 95 U. S., 714, see 733; also in *Windsor v. McVeigh*, 93 U. S., 274, see 277.

In all litigations, the result of which must affect the property and rights of the corporation, this Court has held that the corporation itself though it has ceased to do business is an indispensable party,

Land & Cattle Co. v. Frank, 148 U. S., 603, see opinion 610.

There can be no doubt then that, *as against the Pioneer Iron Company* the judgment of the Courts of Michigan, determining its rights and stopping its use of the ninety-nine year lease in a suit to which it was not a party violates the principle recognized in all the foregoing decisions, and invades the constitutional rights of the Pioneer Iron Company.

All the defendants disclaimed that in asserting the right to mine upon said premises they were acting personally or that they acted otherwise than as stockholders, officers and agents of the Pioneer Iron Company.

That defendants below, (except The Cleveland-Cliffs Iron Company), *were* such stockholders, officers and agents of the Pioneer Iron Company was not questioned, otherwise than that *complainants denied the right of said corporation to extend its corporate existence under its reorganization of* 1889, — which had been effected and had been recognized by the State of Michigan for over twelve years. While complainants in their bill allege the expiration of the original charter of the Pioneer Iron Company, — by reason of which they claimed the termination of its rights, — yet they also by amendment, (Record, pages 49, 50), set forth the reorganization of such Company in 1889 under the Statutes of the State of Michigan. Subsequently, on the hearing both the complainants, (Record, pages 295-303), and de-

fendants, (Record, pages 517-545), introduced in evidence the certified articles of association, reorganizing said Company as a corporation;—

The question, therefore, whether defendants might mine iron ore upon the property depended on whether the Pioneer Iron Company, as reorganized, still owned the ninety-nine year lease and still had the right to mine under its terms. If the lease were valid and in force so that the Pioneer Iron Company had under it the right to mine, — defendants, officers of said company *could not be trespassers* in asserting its right to mine. Only by finding this lease to have terminated, could the injunction prayed for be granted against the officers and agents of said company.

Complainants in their bill recognized this to be the legal situation, and grounded their case upon acts of forfeiture and destruction of the lease, and the claim that such lease was not by its terms available to the Pioneer Iron Company *after its extension by reorganization,* — by reason of all of which it was averred that the property and rights in this lease no longer existed in the Pioneer Iron Company.

Upon this issue the case was heard, and the record discloses that the vast mass of testimony offered by complainants was mainly directed to an attack upon the rights of the Pioneer Iron Company in said lease; the defense was an assertion of those rights.

The Circuit Court of Marquette County treated this as the issue, and the decree which was affirmed *was almost entirely based upon findings of the rights of said Company.* (Record, pages 556-559.)

NECESSARY RESULTS OF JUDGMENT.

In such a suit and under the issues joined it is manifest that it would be impossible to make a decree determining the *rights of the parties before the Court* without necessarily affecting the rights and interests of the Pioneer Iron Company.

By declaring the lease forfeited by past acts, its value was gone. By declaring the lease inoperative because it was claimed to be appurtenant to an abandoned furnace, or because it was claimed that the same did not continue and remain the property of the corporation, as reorganized, the result to the Company was the same, namely; *the complete loss of its valuable property rights in this leasehold.*

By enjoining the stockholders, officers and agents of this Company and preventing them both personally and *as its representatives,* from operating under this lease, the company's use of the same is ended and the value to it was cut off and diminished.

The granting of *any* of the remedies prayed for presupposed the termination of the property rights of the Pioneer Iron Company, — or at the very least so great an interference as to impair the value and use of the leasehold. The *practical result and effect of the decree* which has been affirmed, is to completely terminate all vested property rights of this Iron Company.

Even should the Pioneer Iron Company attempt to regain its rights by litigation,—yet under the holdings of the Michigan Supreme and Circuit Courts, and the intimations contained in their opinions in this case, it would undoubtedly

meet the claim that its rights had been practically, if not in form, already adjudicated.

Even though technically the Pioneer Iron Company might yet go into other litigation with the hope of establishing its rights, yet its officers and agents are in the meantime by the decree complained of stopped from mining and obtaining iron ore; and while complainants are rushing forward their mining operations and depleting the ore, *years of this valuable leasehold are practically thereby and during such litigation cut off from the term.* So that not only is the business of the Company connected with its mines practically stopped during the litigation, but the *term of the lease is thereby actually shortened,* and its *value diminished.*

The Constitution of the United States, however, does far more than to guarantee to its citizens the simple right to litigate. It forbids the taking of their property without due process of law; and such we insist is the result of the action of the Courts of Michigan.

RIGHTS OF STOCKHOLDERS INVADED.

If the property of the Pioneer Iron Company was taken, by judgment in a suit to which it was not a party, — the property of the stockholders of that company was taken without process of law.

The stock of the Pioneer Iron Company could only be valuable because of the legal existence of that company, and the value and extent of its property, rights and privileges. Indeed, the corporation as a matter of equity holds its property in trust for the stockholders.

In 1st *Clark and Marshall on Corporations*, Sec. 7, G. P., 23, the following statement of the law is found:

> "Though the title to the property of a corporation is in the corporation and not in the stockholders, the stockholders are undoubtedly interested therein. Though the title is in the corporation, the beneficial interest is in the stockholders in proportion to their shares," also
>
> "For the same reason a stockholder is interested in an action by or against the corporation, although not technically a party thereto, etc. etc."

It must, therefore, follow that any judgment, affecting a corporation, which destroys the value or limits its use of its property, also injures the property of the stockholders and the value of their stock.

If the property of the Iron Company was taken and destroyed, or injuriously affected, the property of the stockholders was also taken. That the effect upon the stockholders was indirect does not vary the principle, — their property is none the less "taken" if its value is impaired.

Railway Co. v. Minnesota, 131 U. S., 458;
Gas Light & Coke Co. v. Cleveland, 71 Federal Reporter, 614.

The stockholders, and all of them therefore, have the constitutional right to proper legal representation in any suit where their property may be injured or taken.

Stockholders themselves have no power to appear for and represent a corporation as parties to a litigation, and cannot therefore protect its property.

Brunson v. Railway Co., 2 Wallace, 301, 302, 303;

Land Co. v. Frank, 148 U. S., 603, 604, 610;
Ex parte Cutting, 94 U. S., 22;
Shoe & Leather Co. v. Kurts, 34 Mich., 88;
Tabot v. Scripps, 31 Mich., 268;
1st Thompson on Corporations, Secs. 1071, 1080;
6th Thompson on Corporations, Secs. 7570, 7579.

Where a corporation or its property are attacked in Court, the stockholders have the constitutional right to be represented and to be defended in such suit *by the corporation itself through their chosen representatives and directors.*

Minnesota v. Northern Securities Co., 184 U. S., 199, see opinion 245, 246.

It therefore follows, that if the corporation did not have an opportunity to appear and defend its rights, its stockholders, were not defended. If the property of the Pioneer Iron Company was taken without due process of law, the property of its stockholders was also taken in the same manner.

This Court of last resort should, therefore, set aside the judgment of the State Courts. for want of proper parties.

Claims of Defendants in Error.

JURISDICTION OF THIS COURT.

Defendants in error deny the jurisdiction of this Court.

First: Because they claim that the federal question here involved was not asserted in behalf of any defendant stockholder of the Pioneer Iron Company except William G. Mather *personally;* that the record failed to show that William G. Mather was such stockholder; and that the State Courts had found against the ownership of stock by said William G. Mather, — by reason of which the federal question was not raised by a stockholder of the Pioneer Iron Company who could be injured by the judgment complained of.

Second: It is claimed that the judgment complained of was otherwise based upon non-federal questions.

Considering first the contention that the federal question here involved was not raised on behalf of a stockholder of the Pioneer Iron Company, we have to say that the incorrectness of the claim as to the facts, and the findings of the Court thereon, will manifestly appear. The jurisdiction of this Court, however, does not rest solely on a finding that William G. Mather was a stockholder of the Pioneer Iron Company, although such was and is the fact beyond dispute.

The answer for defendants below, and the opinions of the State Courts, show that the federal question was asserted in behalf of all defendant stockholders.

Defendants in Error asserted from the first to last of this case, and in their brief filed in this Court they yet assert, (defendants brief, page 11 and subsequent pages), that defendant below, The Iron Cliffs Company, was a large stockholder of the Pioneer Iron Company. They further in the Courts below asserted that William G. Mather was an officer of the Pioneer Iron Company, and that he held and owned stock belonging to the Iron Cliffs Company, as its trustee, (Record, page 555). There was no attempt at denial of either the official position of William G. Mather, or the ownership of stock by him, both personally and in trust. In fact, the complainants based an argument to the Courts of Michigan upon the claim and assertion that, — "William G. Mather *was President* of the Pioneer Iron Company, and the holder of a large majority of its stock as trustee for defendant, The Iron Cliffs Company, at the time of filing the bill." Their claim being that therefore said Pioneer Iron Company would be bound by the decree rendered, although not a formal party to the suit, (Record, page 555).

Both the Courts of the State of Michigan practically if not explicitly found that said defendants were stockholders of the Pioneer Iron Company, (Record, pages 555 to 559).

If, therefore, the federal question was fairly raised and asserted in behalf of such stockholders, or either of them, this Court has jurisdiction of the case. It is not necessary that such federal question be raised by answer, if the record shows that it was in fact asserted in the State Courts, and was there considered and was ruled upon against them.

Land and Water Co., vs. San Jose Ranch Co.,
189 U. S., 177-180.

The federal question is sufficiently "set up and claimed" if such federal question was fully considered in the opinion of the Court and was ruled upon against the plaintiffs in error. ***Ibid., see Opinion, p. 180, citing numerous decisions of this Court.***

William G. Mather set up this constitutional right by *amendment to the answer filed by The Iron Cliffs Company The Cleveland-Cliffs Iron Company and William G. Mather,* (Record, pages 40, 51, 52), and this right was claimed for himself individually *and as trustee,*— the stock of The Iron Cliffs Company being owned by him in trust, (Record, page 51, 52).

The State Courts understood that this question was raised in behalf of all defendant stockholders, this is plainly evident from their opinions. *The Circuit Court* in its opinion, (Record, pages 554, 555) says: "It is contended in behalf of defendants that in any event the defendants are not entitled to a decree without making the Pioneer Iron Company a party to the suit;" also, on page 555, "They, (complainants), also contend that the Pioneer Iron Company would be bound by the decree without making it a party, — *for the reason that defendant William G. Mather was the President of the company and the holder of a large majority of its stock as trustee for defendant, The Iron Cliffs Company.* Said Court found that it was not necessary to make the Pioneer Iron Company a party defendant, (Record, page 555).

In the Supreme Court the same right was asserted in behalf of all stockholders.

The Court in its opinion says (Record, page 569), "It is also urged as a fatal objection to the maintenance of this bill that the Pioneer Iron Company is not made a party;"

Answering this the Court say, (Record, page 569), "*The defenadnts own* and have owned for many years *all its capital stock*, etc., etc." We do not here purport to embody all the language of the Supreme Court, but sufficient only to indicate that the constitutional right was being claimed on behalf of all defendant stockholders.

Said Supreme Court also determined, (Record, page 569), that "*The Pioneer Iron Company, therefore, was not a necessary* party.

It thus appears that the constitutional right was raised and was understood by both Courts and counsel for defendants in error to be raised.

In both Courts this question was considered, and both decided that the Pioneer Iron Company was not a necessary party to the suit.

The decision of the constitutional question was *necessarily involved* in the decision, and the conclusion that the Pioneer Iron Company was not a necessary party to the suit.

Water Power Co., v. Canal Co., 142 U. S., 254, see opinion 268, where the Court say:

> "This Court has frequently had occasion to hold that it is not always necessary that the federal question should appear affirmatively on the record or in the opinion, if an adjudication of such question were necessarily involved in the disposition of the case by the State Court."

MATHER'S OWNERSHIP OF STOCK.

Nowhere does the record show a finding against Mr. Mather's ownership of this stock; on the contrary the fact of his ownership was assumed, and practically found and determined.

The affirmative proof of his ownership of the stock of the Pioneer Iron Company, abundantly appears in the record.

1. Record, page 52. The answer of Mr. Mather set forth that he owns the same individually and as trustee.

2. Record, page 344. James H. Hoyt testified that in the year 1891 William G. Mather was President of the Pioneer Iron Company. This of course could not have been true unless he was a stockholder. (Record, page 350). Mr. Hoyt further testified that "the stock of the Pioneer Iron Company was held by William G. Mather, — the large portion of it as trustee," for a good many years.

3. Record, pages 517, 518. The exact holding and ownership of the stock of the Pioneer Iron Company in the year 1890 is shown by the amended articles of association of said company taken from the books of the Secretary of State of Michigan. These books show that Mr. Mather owned:

Individually	10 shares
As Trustee	4930 shares

The 4930 shares being equitably the property of defendant, the Iron Cliffs Company, as testified by Mr. Hoyt.

4. Record, pages 531, 534, 537, 539. On April 6, 1901, the record shows that William G. Mather yet owned:

Individually	10 shares
As Trustee	3930 shares

The stock so held as trustee being the property of the Iron Cliffs Company, it having been testified that a thousand shares of the Pioneer Iron Company's stock had been sold during the ten years to Mr. Hale, General Garretson and others who were not parties to the suit.

5. Record, page 555. During the trial and the argu-

ment of the case as hereinbefore stated complainants by their counsel asserted the ownership of this stock by William G. Mather, insisting that *he was President of the* Pioneer Iron Company, which necessarily required an ownership of stock, and further that *he held stock as trustee for the Iron Cliffs Company.*

In addition to the foregoing, and corroborative of the fact that the Courts of Michigan as well as counsel for complainants were satisfied that this federal question had been raised in said suit *by defendants who were stockholders of the Pioneer Iron Company,* is the fact that on December 3, 1903, the judges of the Supreme Court of Michigan after due consideration, allowed the writ of error herein to this Court; which, but for the ownership of said stock and the fact that said federal question had been raised, would not have been done.

There was in fact no attempt at denial or contradiction of the ownership of this stock by William G. Mather for himself and as trustee of The Iron Cliffs Company; and the only indication in the record to the contrary consists either of certain loose statements of witnesses, or disconnected scraps of testimony, not intended in any case to deny the ownership of stock by William G. Mather; and which is only made to appear so, by reason of being *now* pieced together as parts of an ingenious argument by counsel.

While it is true that the books of the Pioneer Iron Company were not brought into Court and thrown open to the inspection of competitors or adversaries, yet the reason for this is perfectly evident when we consider that the Pioneer

Iron Company was not made a party to the suit and that no step which could be taken by the defendants in Court would serve to protect its property or its rights. The only apparrent use to be made of them was to give to other competing corporations a knowledge of its private business.

OTHER CLAIMED NON-FEDERAL QUESTIONS.

The claims found in the brief filed by defendants in error, pages 40 to 50, that the Court decided the case between the parties, complainant and defendant, upon non-federal grounds, are not sustained *as matter of fact.* This will appear by an examination of the judgment which was affirmed, (Record, page 556.)

As matter of law, the claim so asserted begs the entire question: While it is true that as *against the parties to the suit* who had their day in Court, if there was a non-federal controversy sufficient to sustain the decision, — then, even if a federal question was also raised, this Court would assume that the decision was based upon the non-federal question and would not take jurisdiction; — yet, as against the Pioneer Iron Company, *which was not a party to the suit*, no Court could hear and decide *any controversy* or question affecting its rights. It follows that any judgment which, in its absence, destroyed, cut off or interfered with the use of the property of the Pioneer Iron Company, necessarily involved an invasion of its constitutional rights.

The existence of a federal question in this case depends, therefore, upon the practical results of the judgment complained of, and not upon the reasons given for rendering it.

If the practical effect of the decision of the Circuit Court of Marquette County, Michigan, which was affirmed in the Supreme Court, is to determine the rights of the Pioneer Iron Company under said lease, and to find the property of the company therein had been lost by acts or defaults of said company; and if by reason of the perpetual injunction allowed, the practical result is that the officers of the Pioneer Iron Company are, as its representatives, perpetually enjoined from asserting rights under said lease on behalf of said company, — then it follows that the rights of the Pioneer Iron Company have been practically determined by the decision, and *a denial of the constitutional right of the Pioneer Iron Company and its stockholders is necessarily involved therein.*

The question, therefore, for this Court's consideration is, *what was the substance of the thing done,* rather than *the theory* on which it was accomplished.

In answer to the suggestion of defendants in error in their brief, page 46, that William G. Mather might be subject to injunction, if, for his own benefit, outside of the terms of said lease, he was attempting to mine, — we say, that no such state of facts was the basis of this suit. No such considerations were passed upon by the Court and no such conditions could lead to the judgment here complained of, — where, among other things, *all the defendants* were perpetually enjoined not only as individuals, *but in their representative capacity,* from further entering upon the lands for the purpose of exploring for or taking any minerals or iron ore or for any purpose whatever.

A decree so sweeping and so destructive of the rights of the Pioneer Iron Company could not be based upon *per-*

sonal encroachment of William G. Mather as an individual. But even in such a case as that supposed, — if the practical effect was to take the property of the Pioneer Iron Company, the judgment would violate the constitutional rights of said company and its stockholders.

Of like character is the suggestion found on page 47 of defendants' brief,— "*that the Pioneer Iron Company is not in any manner deprived of or affected in its rights by suit or by other means to assert or determine its rights to mine ore under its lease.*"

This claim, we have hereinbefore discussed and answered on pages 24-25 of this brief. The fact, however, that the practical use and value of said lease to the Pioneer Iron Company is directly interfered with and cut off by the judgment complained of, — could not be demonstrated more clearly, than by the evident fact that said company cannot now *enjoy and use its property, without entering upon another litigation.*

We submit therefore, that the motion to dismiss this case for want of jurisdiction should be overruled, — that the judgments of the Courts of the State of Michigan should be reversed and that the case of complainants below should be dismissed.

Respectfully submitted,

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